HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE SHRI JAGDISH BHALLA, Ag. CJ. &
HON'BLE SHRI SATISH K. AGNIHOTRI, J.

Writ Petition (C) No.5985 of 2007 ~~2006~~ Corrected

Petitioner Sarvesh Choubey, aged about 20 years, son of Shri Onkar Nath Coubey, resident of – B-541, Street – 3, Smriti Nagar Bhilai, Distt Durg (CG)

Versus

Respondents

1. Central Board of Secondary Education All India / Pre-medical / Pre-Dental Entrance Examination Unit, Through – its Controller

   (An Autonomous organisation under the Ministry of Human Resources Development) Government of India, 2 Community Centre, Preet Vihar, Delhi, 110092

2. The Secretary, Department of Human Resources and Development, Government of India, New Delhi.

3. The Principal, Government Dental College, Raipur (CG)

Writ Petition under Article 226 of the Constitution of India

Present : Shri TK Tiwari, counsel for the petitioner.
Shri Yashwant Singh, Government Advocate for the State.

ORAL ORDER

(Passed on 17th October, 2007)

The following oral order of the Court was passed by **Hon'ble Jagdish Bhalla, Ag. C.J.**

The petitioner has approached this Court when, according to him, he was not allowed to participate in the counselling for admission in MBBS course by respondent No.1. We have been informed by the

learned Government Advocate that on 30th September all the admissions have been closed in the light of the Judgment of Hon'ble Apex Court in the matter of ***Mridul Dhar (Minor) and another Vs. Union of India and others – (2005) 2 SCC – 65***. According to the petitioner, he has been given admission in BDS course. Thereafter, petitioner wanted to appear in the counselling for MBBS course, was asked to leave his BDS course and then appear in the counselling. Petitioner refused to leave the BDS course and hence, was not permitted to appear in the counselling for MBBS course. However, petitioner was marked absent in the counselling, though he was not permitted.

The petitioner instructed his counsel to prepare the writ petition and affidavit of the same was done on 09.09.2007, however, the petition was filed on 18.09.2007. On 24.09.2007, the default was made good. Thereafter, on 05.10.2007 when the matter was taken up by this Bench, the case was adjourned on the request of Shri Anil Tripathi, counsel for the petitioner and it was ordered to be listed on 15.10.2007. We cannot understand why urgency was not shown on behalf of the petitioner before 30.09.2007. The writ petition was ready on 09.09.2007, filed on 18.09.2007, defects were removed on 24.09.2007, and even on 05.10.2007 adjournment was sought as referred to hereinabove.

Learned counsel for the petitioner has relied upon para 24 of the judgment in the matter of ***Indian Bank Vs. ABS Marine Products Pvt. Ltd.- 2006 AIR SCW 2156***, which reads as under :

> "24. One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction / order is

> in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption / relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption / relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should, therefore, be careful to ascertain and follow the ratio *decidendi*, and not the relief given on the special facts, exercising power under Art.142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may."

We are of the opinion that the law laid down by the Hon'ble Apex Court is binding upon this Court. However, learned counsel for the petitioner could not explain how the aforesaid law is applicable in this case in light of the law laid down by Hon'ble Apex Court in the case of **Mridul Dhar** *(supra)* wherein specific time schedule has been fixed along with directions so that admission process shall come to an end by a specific date. Further we find that para 14 of the said judgment is crystal clear with regard to period of academic session and closure of admission after 30th September each year. For the purpose of admission, this Court follows the verdict in the case of **Mridul Dhar** *(supra)*. Accordingly, no interference is warranted in this matter. The Writ petition is dismissed.

Sd/-
Jagdish Bhalla
Ag. Chief Justice

Sd/-
Satish K. Agnihotri
Judge

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